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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,272	12/15/2003	Ernest Patrick Hanavan III	5760-16500	3824

35690 7590 08/28/2006

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EXAMINER	
PEIKARI, BEHZAD	

ART UNIT	PAPER NUMBER
2189	

DATE MAILED: 08/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/736,272	**Applicant(s)** HANAVAN, ERNEST PATRICK	
	Examiner B. James Peikari	**Art Unit** 2189	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 August 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

B. James Peikari
Primary Examiner
Art Unit: 2189

Continuation of 11. does NOT place the application in condition for allowance because:

1. In the entire request for reconsideration, there is no cited support from applicant's disclosure (i.e., from the specification by paragraph or by page and line number and/or from the elements of the drawings) for any feature of the claims, including especially those features that applicant has argued as distinct from the cited prior art.

2. Regarding the arguments for "three types of data", on page 4 of the remarks applicant relies on the language "derived" from, however applicant's disclosure has no support for "derived" backup data (i.e., checksums, change data, parity bits, etc.). In fact, the specification merely states that the data is a "copy", as explained in the rejection.

3. Regarding the arguments of what comprises the "boundaries" of the SAN, applicant points to the cloud in Figure 6 of Aultman et al. However, the arguments made in this section of the remarks sharply contradict appliicant's statement that "The SAN model places storage on its own dedicated network, removing data storage from both the server-to-disk SCSI bus and the main user network." (note paragraph [0005] first sentence).

More importantly, however, by relying on the cloud to determine the boundaries of the SAN, applicant's arguments have now undercut the antecedent basis in the disclosure for all of the present claims -- note particularly the cloud shown in applicant's Figures 1, 2, 3A and 3B.

4. Appellant's arguments on page 7 provide a definition of "mirroring" which is unduly limited in its scope and, in fact, provides no extrinsic evidence of such a narrow definition. In contrast to applicant's assertion, one of ordinary skill in the art would recognize that mirroring simply means making and/or maintaining two or more copies of data (which would include backing up data from a first copy). Note the network definition: "In a nework, a means of protecting data on a network by duplicating it, in its entirety, on a second disk" -- Microsoft Computer Dictionary, Microsoft Press, 1999, p. 293, cited as extrinsic evidence herewith.

5. All of applicant's arguments regarding "freezing" and "thawing" rely on applicant's definition of "mirroring". In view the Remarks 4 above, therefore, these arguments are moot. The cited passages of column 2 of Tamer explicitly teach the claimed "freezing" and "thawing".